

B1 12⁷ (Amended) The method of [claims] claim 1 wherein the tropoelastin or lysyl oxidase has been mixed with other materials selected from the group consisting of polymers, emulsifiers, oils, perfumes, proteins, polysaccharides, nucleic acids, microfibrils, antimicrobial agents, adhesive agents, and protease inhibitors.

A2 8 12⁸ (Amended) A kit comprising tropoelastin substantially identical to wild type tropoelastin and lysyl oxidase substantially identical to wild type lysyl oxidase in separate compartments.

~~Please cancel without prejudice claims 4, 6-8, 16, and 18-25.~~

Remarks

Applicant confirms election of Group I with claims 1-19 and 23-25, drawn to a method of promoting wound healing comprising application of tropoelastin and lysyl oxidase and to a first kit comprising separate compartments for tropoelastin and lysyl oxidase, classified in class 424, subclass 94.4. Non-elected claims 20-22 have been canceled herewith.

Claims 1-25 are pending in the application. Claims 1-19 and 23-25 stand rejected. Claims 1, 12, and 13 have been amended. Claims 4, 6-8, 16, and 18-25 have been canceled. No new matter is added to the application by this Amendment. Applicant respectfully requests reexamination and reconsideration of the case. Each of the rejections levied in the Office Action is addressed individually below.

I. Claim Objections. Claims 1 and 12 were objected to by the Examiner due to informalities with respect to grammar. The errors pointed out by the Examiner have been corrected by the Amendment filed herewith. Applicant would like to thank the Examiner for pointing out these errors in the claims.

II. Rejection under 35 U.S.C. §112, first paragraph, for written description. Claims 4, 6-8, 16, 18 and 19 have been rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the Specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 4, 6-8, 16, 18, and 19 have been canceled thereby obviating this rejection.

III. Rejection under 35 U.S.C. §112, first paragraph, for lack of enablement. Claims 1-19 and 23-25 have been rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 4, 6-8, 16, 18, 19, 24, and 25 have been canceled, and independent claims 1 and 13 have been amended herewith, as suggested by the Examiner, to recite "isolated tropoelastin substantially identical to wild type tropoelastin" and "lysyl oxidase substantially identical to wild type lysyl oxidase" in "promoting the healing of a skin wound". Examiner has admitted that the Specification is enabling for a method of promoting healing of skin wound utilizing native lysyl oxidase and utilizing native tropoelastin.

Applicant has used the language "substantially identical" to cover any variants of tropoelastin and lysyl oxidase that would be covered under the doctrine of equivalents. It would be clear to one of ordinary skill in the art that "substantially identical" is the same as insubstantial differences, in which case the claims grant no more or less protection than that to which Applicant is properly entitled under the doctrine of equivalents (*Warner-Jenkinson Company, Inc. v. Hilton Davis Chemical Co.*, 520 U.S. 17 (1997)). Clearly, Applicant is entitled this scope of protection under the doctrine of equivalents. Applicant respectfully submits that such protection is justified and to deprive an inventor of such a breadth of protection would be against public policy. Without such a breadth of protection, a potential infringer could easily design around the claimed invention by making a single amino acid substitution in the tropoelastin or lysyl oxidase protein. This would obviously be unfair and provide the inventor with less patent coverage than he rightfully deserves for his contribution to this art.

Applicant respectfully submits that the amended claims are enabled by the Specification, and therefore, the Applicant respectfully requests that the rejection under 35 U.S.C. §112, first paragraph, be removed.

In view of the forgoing arguments, Applicant respectfully submits that the present case is now in condition for allowance. A Notice to that effect is requested.

Please charge any fees that may be required for the processing of this Response, or credit any overpayments, to our Deposit Account No. 03-1721.

Respectfully submitted,



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